

**STATE ENVIRONMENTAL COMMISSION (SEC)**  
**Meeting of October 4, 2005**  
Department of Conservation & Natural Resources  
Carson City, Nevada

**MEMBERS PRESENT:**

Alan Coyner, Vice Chairman  
Terry Crawforth  
Don Henderson  
Ira Rackley  
Hugh Ricci  
Harry Shull  
Stephanne Zimmerman

**MEMBERS ABSENT:**

Melvin Close, Chairman  
Lewis Dodgion  
Pete Anderson  
M. Francis Sponer

**Staff Present:**

David Newton, Deputy Attorney General  
John Walker, Executive Secretary  
Nan Paulson, Recording Secretary

Vice Chairman Coyner called the meeting to order at 10:00 a.m. He acknowledged that the meeting had been properly noticed.

**READER's NOTE:** These are summary minutes of the above referenced meeting of the State Environmental Commission (SEC). Please contact the SEC Recording Secretary for a copy of the verbatim minutes of the proceedings (i.e., available in audio format only, analog cassette magnetic tape).

Vice Chairman Coyner introduced new Commissioner Stephanne Zimmerman from Henderson and asked her to tell everyone a little about herself.

Commissioner Zimmerman said she was born and raised in Las Vegas, graduated from UNLV, became a CPA and worked in a public accounting firm for five years. She is now employed by Basic Management, Inc. (BMI) in Henderson NV and has been with them for 13 years. Basic Management, Inc. is a land development company. They have their own private water system and power distribution system. They are also involved in a large remediation/clean-up action at their facility in Las Vegas.

On the SEC, Ms. Zimmerman represents the public at large.

**I. Approval of Minutes from the June 10, 2005 SEC Meeting**

Vice Chairman Coyner asked for approval of the minutes from the last meeting. Commissioner Henderson made a motion, and Commissioner Crawforth seconded it.

Vice Chairman Coyner said he had a two spelling corrections in the Public Notice section of the minutes and asked if anyone else had suggestions; there were no other corrections so Vice Chairman Coyner asked for a motion.

All members were in favor of approval of the minutes, with no objections.

## **II. SETTLEMENT AGREEMENTS ON AIR QUALITY VIOLATIONS**

Vice Chairman Coyner asked the Division to approach the podium with a brief summary of the five Settlement Agreements that are under consideration today.

Mike Yamada, Compliance & Enforcement Supervisor for the Nevada Division of Environmental Protection's (NDEP) Bureau of Air Quality (BAQ), spoke about the settlement agreements for Air Pollution Control violations by the following five companies:

- A.** Bald Mountain Mine – Violation #1963
- B.** Caithness Dixie Valley, LLC – Violations #1956-1960
- C.** Harvey's Resort Hotel/Casino – Violation #1962
- D.** H.E. Hunewill Construction – Violation #1961
- E.** Southern California Edison Mohave – Violations #1952-1955

Mr. Yamada's discussed each of the BAQ Settlement Agreements. They are attached as Appendix # A. Vice Chairman Coyner asked if there were any questions from the members.

Regarding Bald Mountain, Commissioner Henderson asked if there was a problem with the permit. Mr. Yamada explained that whoever filled out the permit for the company did not put in the correct emission numbers for their altitude. It was not an operational problem with the kiln.

There were no comments from the public so Vice Chairman Coyner asked for a motion. Commissioner Ricci made a motion; Commissioner Crowthorn seconded the motion. All were in favor; no one was opposed.

Caithness Dixie Valley was the next NOAV Mr. Yamada talked about. After the discussion, Vice Chairman Coyner asked for questions or comments from the members.

Commissioner Henderson asked if the failure to file their reports was due to a change in personnel. Mr. Yamada said there was a purchase of this facility and it may have been overlooked. Commissioner Ricci asked if there was a notification from the Division to advise them to notify. Mike Yamada explained that the permit holders are responsible to file their permits, and that there is no notification process from the Division. Reporting is a federal requirement.

Mr. Yamada told the Commission that Caithness Dixie Valley is not a poorly run facility, and the Division inspections have not come up with any violations except this one.

Vice Chairman Coyner asked for a motion to approve NOAV # 1956-1960. Commissioner Crowthorn made a motion; Commissioner Shull seconded the motion, when asked if all were in favor, Commissioner Henderson asked for a discussion.

Commissioner Henderson voiced his concern over the amount of money Caithness will have pay for misunderstanding the requirement to apply for the permit. Mike Yamada explained that there is a penalty matrix involved, and the Division did lower the penalty fee from the amount the matrix showed because this company does not have other violations. Mr.

Yamada continued explaining that the Division must be careful to not put the fines so low that the federal government would overfile the Division's decision. The federal government has their penalties set up to be over \$25,000 per day and if they think the Division fees are too low, they can penalize with higher fines. The federal government considers failure to file as a serious violation, they call them High Priority Violations and they have a separate category for them.

Mr. Yamada said the Division lowered the fine by approximately \$4,000.00.

Vice Chairman Coyner wanted to know if Caithness is the only Class I permit holder of the 30 geothermal plants in the State. Chief Mike Elges, Bureau of Air Pollution Control (BAPC), approached the podium. He believes Caithness is the only Class I. He further mentioned that there were similar violations with Sierra Pacific about 6 months ago and these fines are similar. The Division is using the same philosophy with Caithness as they did with Sierra Pacific. It was not because of non-compliance, it was a record keeping issue for both companies.

When the discussion was over, Vice Chairman Coyner called for a vote, all were in favor, and none were opposed.

Regarding Harvey's Resort Hotel/Casino, BAPC Permitting Supervisor Greg Remer said there is a permit expiration notification procedure in place for all permittees. They get a notification four to five months before the permit is due.

There was no more discussion, no members of the public approached the podium, and so Vice Chairman Coyner asked for a motion. Commissioner Crawford made a motion and Commissioner Shull seconded the motion. All were in favor; no one was opposed.

H. E. Hunewill Construction Company- there were no questions from the public. Vice Chairman Coyner asked for a motion. Commissioner Crawford made a motion and Commissioner Shull seconded the motion, all were in favor, no one opposed.

The only change made was an error in the violation numbers for Harvey's and Hunewill, as they were switched. Harvey's was printed as NOAV # 1961, when it should have read 1962. Hunewill was printed as NOAV # 1962, when it should have read 1961.

The final settlement was Southern California Edison (SCE). After Mike Yamada was finished with his introduction of the violations, Commissioner Crawford expressed his concern over a company such as Caithness that pays a large fine for a procedural error, yet this company pays less for emitting substances into the atmosphere. Especially since SCE has had a lot of violations in the past and paid the fines because it was cheaper to pay than to fix the problem.

Vice Chairman Coyner asked why SCE had not been seen for approximately five years; what happened to change the amount of times they were being seen? Mike Elges approached the podium to explain. Mr. Elges said the evolution of the Title V permit has put companies on the mark for compliance or potentially be sued by a third party group. The Division has worked hard to help this plant to be in compliance. The company staff worked hard to correct the problems, even knowing the plant was going to be shut down.

Mr. Elges continued by saying the federal government has pushed self-compliance and there are violations in both areas; emissions and paperwork. He added that Mike Yamada is putting together a proposed package for a revised penalty matrix to address some of these issues. They hope to get this to the Commission in the near future.

Vice Chairman Coyner asked if there were any questions from the public. There were none so he asked for a motion. Commissioner Crawford made a motion to accept NOAV #s 1952-1955. Commissioner Shull seconded the motion. All were in favor; no one was opposed.

Vice Chairman Coyner then moved to the next item on the agenda (the regulatory petitions):

### **Bureau of Mining Regulation & Reclamation**

#### **(1) Regulation R097-05: Mining Reclamation Permit Modification and Fee Adjustments.**

*(Note: the SEC approved this regulation as a temporary regulation on June 10, 2005. The regulation remains unchanged and is now proposed as a permanent regulation.)* This regulation amends the Nevada Administrative Code (NAC) 519A mining reclamation. Changes include a revision to the current fee structure for a permit modification and the definition of minor permit modifications. The proposed revision also defines a major modification. The revision to the current fee structure will reduce the fees charged for simple changes to the permit that require minimal staff time to review and process. The other proposed revisions set clearer parameters to define minor and major modification.

This regulation will not have an immediate or long-term adverse effect on business or the public. There will be no additional cost to the agency for enforcement of the proposed regulation and the regulation does not overlap or duplicate any regulations of other state, federal, or local agencies. The amended regulation is no more stringent than what is established by federal law. As noted above, a revision to the current fee structure is proposed and would reduce fees charged for simple permit changes. (SEC Petition 2005-01)

#### **Discussion:**

Dave Gaskin, Chief of the Bureau of Mining Regulation and Reclamation, introduced Connie Davis, Reclamation Branch Supervisor.

**NOTE:** A copy of the outline of Connie Davis' presentation is included as appendix # 1.

#### **Public Comments / SEC Discussions & Staff Responses**

Regarding reclamation permits for mining operations, Commissioner Ricci asked about the definition of Major Modification. Mrs. Davis explained that the previous definition was too vague. This regulation will help industry to know what is expected from them and will give a clearer understanding of the requirements to the Division and to the public.

#### **SEC Action**

Vice Chairman Coyner asked if there were any other comments from the Commission or Public. There were none so he asked for a motion to accept Petition 1, LCB File number

R097-05. Commissioner Crawford made a motion; Commissioner Ricci seconded the motion. All were in favor; no one was opposed.

Vice Chairman Coyner moved to the second regulatory petition on the agenda:

**(2) Regulation R035-05: Vehicle Emission Testing - Inspection & Maintenance Program:**

*(Note: the SEC approved this regulation as a temporary regulation on November 30, 2004, The intent of the regulation remains unchanged and is now proposed as a permanent regulation.)* The proposed regulation clarifies and updates the Inspection & Maintenance (I/M) provisions of NAC 445B and brings them into alignment with the NRS. The amendments bring diesel vehicles with a gross vehicle weight rating (GVWR) from 8,500 up to and including 10,000 pounds into the I/M program as per AB 36. It also aligns the Clark County I/M program area in the NAC with what is in the Nevada I/M State Implementation Plan and clarifies which areas are included in the Washoe County I/M program and which are exempt.

This regulation has an economic effect on selected diesel vehicle owners and fleets. In the emissions testing areas of Washoe and Clark Counties, diesel-powered vehicles with a GVWR noted above require an annual test before registering. Each year, Nevada Department of Motor Vehicles (DMV) sets a maximum fee for emissions tests; in 2004, it was \$39.00 in Clark County and \$36.00 in Washoe County.

There are no additional costs to the agency (DMV) for enforcement of the proposed regulation, the regulation does not overlap or duplicate any regulations of other state, federal or local agencies, and the regulation is no more stringent than what is established by federal law. Fees collected by the DMV from the emissions testing program are used as specified in NRS 445B.830. (SEC Petition #2004-27)

**Discussion:**

Sig Jaunarajs, Environmental Scientist with the Bureau of Air Quality Planning, presented the above regulation to the Commission.

**NOTE:** A copy of the outline of Mr. Jaunarajs' presentation is included as appendix # 2.

**Public Comments / SEC Discussions & Staff Responses**

Commissioner Zimmerman asked for clarification about the specific geographic areas in Washoe and Clark counties that would be covered by the regulation; she specifically asked how the areas were defined. Mr Jaunarajs explained that the areas were determined through the use of geographic basin maps. He presented the map to the Commission (See appendix #2).

There were no public comments.

## SEC Action

Vice Chairman Coyner asked for a motion to approve Petition R035-05. Commissioner Shull made a motion; Commissioner Henderson seconded the motion. Commissioner Crawford opposed the petition, and all other Commissioners approved it.

Vice Chairman Coyner moved to the third regulatory petition on the agenda:

**(3) Regulation R037-05: Adoption By Reference of Federal Regulations:** *(Note: the SEC approved this regulation as a temporary regulation on November 30, 2004. Minor technical corrections were made to the temporary regulation and it is now proposed as a permanent regulation.)* The Nevada Division of Environmental Protection (NDEP) is delegated implementation and enforcement of those federal New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) rules requested by Nevada. However, it is necessary to keep the State's "adoption by reference of provisions of federal law and regulations" regulation (NAC 445B.221) up to date so that EPA can continue to delegate new rules to the State.

The temporary amendments adopted last fall updated the State's adoption of federal regulations through November 2004. The technical corrections to the temporary regulation are necessary to avoid confusion regarding NDEP's delegation authority. The corrections remove two rules that are not delegated from the State list of adopted federal rules. The rules that are being removed are Title 40 C.F.R. Part 60 Subpart AAA, New Residential Wood Heaters, and Title 40 C.F.R. Part 61 Subpart M, Asbestos.

This regulation will not have an immediate or long-term adverse effect on business or the public. There will be no additional cost to the agency for enforcement of the proposed regulation and the regulation does not overlap or duplicate any regulations of other state or local agencies; however it does adopt federal regulations from Title 40 of the Code of Federal Regulations, Parts 60 and 61 by reference. The amended regulation is no more stringent than what is established by federal law and it will not increase fees. (SEC Petition #2004-29)

## SEC Discussions & Staff Responses

Greg Remer, Supervisor of the Bureau of Air Pollution Control, presented the regulation to the Commission. Vice Chairman Coyner expressed his discontentment with the need to put prices into the regulations, as it forces the Division to return to the Commission if the prices change. In response to Mr. Coyner's concern, NDEP Bureau of Corrective Actions Supervisor Gil Cerruti shared with the Commission information stating that NRS 233B requires these price listings.

**NOTE:** A copy of the outline of Mr. Remer's presentation is included as appendix # 3.

## PUBLIC COMMENTS

There were no public comments.

## SEC ACTION

Commissioner Crawford made a motion to accept this regulation and Commissioner Rackley seconded the motion. All were in favor; none were opposed.

Vice Chairman Coyner moved to the forth regulatory petition on the agenda:

**(4) Regulation R036-05: Visible Emissions:** *(Note: the SEC approved this regulation as a temporary regulation on November 30, 2004. The regulation has been slightly altered and is now proposed as a permanent regulation.)* This regulation proposes to repeal NAC 445B.22023, "Visible emissions: Coal-fired steam generating facilities," contingent upon the requirements of a federal consent decree. The amendment is needed to comply with Nevada's Applicable State Implementation Plan (ASIP), which ensures that the National Ambient Air Quality Standards are attained and maintained. This amended regulation is necessary as part of the ASIP update that was submitted to U.S. EPA in February 2005 with a supplement in June 2005.

This regulation will not have an immediate or long-term adverse effect on business or the public. There will be no additional cost to the agency for enforcement of the proposed regulation and the regulation does not overlap or duplicate any regulations of other state, federal, or local agencies. The amended regulation is no more stringent than what is established by federal law and it will not increase fees. (SEC Petition #2004-28)

**NOTE:** A copy of the outline of Mr. Remer's presentation is included as appendix # 4.

## SEC Discussions & Staff Responses

Greg Remer, Supervisor of the Bureau of Air Pollution Control, also presented this regulation to the Commission. Vice Chairman Coyner asked Mr. Remer to explain the repealed section. Greg said that in section 5 of the regulation, there were changes made in May of 2004 but the Legislative Council Bureau (LCB) has not codified these changes yet. When the Division put in other amendments for these sections, LCB was struggling with future effective dates on previously adopted permanent regulations to these 3 provisions. LCB decided to repeal the temporary date as of the effective date of the filing, which would make this permanent rule effective to replace it. This would do away with any conflict between permanent and temporary status.

## PUBLIC COMMENTS

There were no public comments.

## SEC ACTION

Vice Chairman Coyner asked for a motion. Commissioner Ricci made a motion; Commissioner Shull seconded the motion. All were in favor; no one was opposed.

Vice Chairman Coyner moved to the fifth regulatory petition on the agenda:

**(5) Regulation R096-05: Revisions to Meet Federal Planning Requirements.** *(Note: the SEC approved this regulation as a temporary regulation on June 10, 2005. The intent of the regulation remains unchanged and is now proposed as a permanent regulation.)* The regulatory changes are necessary to supplement the February 2005 submittal of Nevada's Applicable State Implementation Plan (ASIP) to EPA, allowing EPA to approve the updated ASIP.

The proposed regulation revises several sections in the permitting provisions of NAC 445B. It adds provisions to ensure good engineering practice regarding stack height and emission limitations, requires Prevention of Significant Deterioration review when relocating certain fossil-fueled power generating units, and updates and clarifies environmental evaluation information requirements. Additionally, the regulation removes Director's discretion for dealing with the handling of organic solvents and other volatile compounds, adds a timeframe for the State's response to requests for technical advice regarding plans for construction or modification of a facility, and increases the time allowed for the State to respond to a request from a source to determine whether an action constitutes construction or modification. Finally, the proposed regulation modifies the requirements for a Class II application for revision of an operating permit, to include information on actual emission rates. Other changes include correcting certain redundant provisions and making several clarifications, technical corrections and updates.

This regulation does not have an immediate or long-term adverse effect on business or the public. There is no additional cost to the agency for enforcement of the proposed regulation and the regulation does not overlap or duplicate any regulations of other state, federal, or local agencies. The amended regulation is no more stringent than what is established by federal law. (SEC Petition #2005-02)

**NOTE:** A copy of the outline of Mr. Remer's presentation is included as appendix # 5.

### **SEC Discussions & Staff Responses**

Greg Remer, Supervisor of the Bureau of Air Pollution Control, also presented this regulation to the Commission. Commissioner Cawthorth asked if the Division submitted a draft to the LCB, it was just returned, and was substantially different? Mr. Remer said the Division submitted the document that the Commission had adopted, a couple of months went by in the drafting process, the Division had some comments, and the LCB provided a final that had some errors. The draft looked different than the original, and they had replace language and moved some things around. It was an untenable version of what the Division had originally intended and what the Commission adopted as temporary regulation. The Division contacted LCB, explained what happened, and the LCB put it back together but some places were not put together correctly. This time when the Division contacted the LCB to have it put together again, they said fine but they could not get it back to the Division in time for this meeting. So, the Division told the LCB what corrections they were going to make, the LCB agreed.

The Division provided the Commission with a new document to help avoid confusion with the changes.



## **PUBLIC COMMENTS**

There were no public comments.

## **SEC ACTION**

Vice Chairman Coyner asked for a motion for LCB file R096-05. Commissioner Crawford made a motion; Commissioner Shull seconded the motion. All were in favor; no one was opposed.

Vice Chairman Coyner moved to the sixth regulatory petition on the agenda:

**(6) Regulation R106-05: Vehicle Emission Control Program - Servicing Fuel Injection Systems:** This new proposed regulation will modify NAC 445B.460 by defining a method for servicing motor vehicle fuel injection systems by facilities licensed as authorized inspection stations or class 1 fleet stations. The regulatory change is being proposed in response to Assembly Bill 239, which was passed by the 2005 Nevada Legislative Session. The proposed amendment will update the Inspection and Maintenance provisions of the NAC and bring them into alignment with the Nevada Revised Statutes.

The proposed amendment will have no adverse economic effects on the regulated industry or on the public. There will be no additional costs to the agency (DMV) for implementing this amendment.

The amended regulation does not overlap or duplicate any regulations of other state, federal or local agencies; the amended regulation is no more stringent than what is established by federal law, and the proposed amendment does not address fees. (SEC Petition #2005-05)

**NOTE:** A copy of the outline of Sig Juanarajs' presentation is included as appendix #6.

## **SEC Discussions & Staff Responses**

Sig Jaunarajs, Environmental Scientist with the Bureau of Air Quality Planning, presented the above regulation to the Commission. Vice Chairman Coyner asked if there were any complaints and how the public was notified. Mr. Juanarajs stated that the Division sent out notices to everyone on a list who wanted to receive information regarding automotive emissions and air quality issues. The Dept. of Motor Vehicles (DMV) has a screen on their emission analyzers on which they flashed an announcement that these workshops were going to be held in Reno and Las Vegas.

Vice Chairman Coyner wanted to know how the Class I stations would know they are not allowed to perform certain services. Mr. Juanarajs said he believes the DMV will talk about updated regulations and inform the stations of the updates. DMV will also check the stations to ensure they are complying.

## **PUBLIC COMMENTS**

There were no public comments.

## SEC ACTION

Commissioner Henderson made a motion to adopt this petition. Commissioner Crawford seconded the motion. There were no other comments or questions so Vice Chairman Coyner called for a vote. All were in favor; no one was opposed.

Vice Chairman Coyner moved to the seventh regulatory petition on the agenda:

**(7) Regulation R083-05: Regulation of Marina Storage Tanks, adoption of International Fire Code, revised procedures for petroleum contaminate soil, and monitoring of MTBE and other contaminants.** This regulation amends NAC 459.9921 to 459.999 by establishing certain requirements for leak detection, prevention, and operation of above ground marina storage tank systems. It adopts by reference the International Fire Code (IFC 2003) for the construction, design, and location of marina tanks, and it provides for an annual registration fee of \$50 for each above ground marina storage tank compartment. The regulation also modifies the handling of petroleum-contaminated soils and it requires monitoring for MTBE and any other contaminant in the groundwater as directed by the Nevada Division of Environmental Protection (NDEP).

The regulation will not have an immediate or long-term adverse effect on the public. The economic impact to a business could be substantial, however, if replacement of an existing tank system is required. Information received from attendees at the workshops held by NDEP indicates that the majority of existing facilities would not require tank replacement. There will be a marginal cost to the agency for enforcement of the proposed regulation, which will be recovered by the annual tank registration fee mentioned above.

To a certain extent, the proposed regulation does overlap certain existing regulatory requirements. Specifically, the International Fire Code 2003 (IFC 2003), adopted by the State of Nevada, has requirements for the location and placing of above ground petroleum storage tanks but does not require advanced systems for leak detection and prevention. The proposed regulation expands on the requirements of IFC 2003 and adds certain other requirements similar to those already existing for aboveground storage tanks. Finally, the annual tank registration fee noted above is proposed to recover costs for implementing the regulations. (SEC Petition #2005-03)

**NOTE:** A copy of the outline of Gil Cerruti's presentation is included as appendix #7.

## SEC Discussions & Staff Responses

Mr. Gil Cerruti, Petroleum Fund Supervisor, presented the regulation to the Commission. Vice Chairman Coyner mentioned that the daily requirement for checking the dispenser hoses in Section 11, they get an exemption when in the off-season. He continued with stating that the daily basis inspection, which would have fallen as number 6 in section 10, should also have an exemption to conform with the next two. Mr. Cerruti said he would bring this up with the LCB.

Vice Chairman Coyner asked if there had been any instances of spills. Mr. Cerruti said yes, the petroleum releases reimbursed by the State of Nevada Petroleum Fund (he only has records of these) occurred in 1992, 1996, 1998, and 2004 at Echo Bay Marina at a cost of

\$614,700; in 1996 and 1999 at Lake Mead Marina at a cost of \$175,300. Additionally, the Petroleum Fund rented the National Park Service a piece of equipment that is used in petroleum remediation for a sum of \$80,000 or \$3,000/month for a clean up.

Mr. Cerruti continued by stating it is opportunistic to have this equipment that can be quickly moved to a site near a lake or a water body for immediate use on a remediation, rather than upon discovery of a remediation, trying to locate a contractor who can build a machine, who may or may not have inventory, and experience a large lag time, during which time that spill may migrate into the lake.

Vice Chairman Coyner noted a letter from a Mr. Stevens complimenting Mr. Cerruti and the way the regulated community was kept involved in this regulation.

## **PUBLIC COMMENTS**

There were no public comments.

## **SEC ACTION**

Vice Chairman Coyner asked for a motion for LCB R083-05, with three amendments. Commissioner Henderson made a motion to approve with the three amendments proposed in sections 9, 11, and 18. Commissioner Shull seconded the motion.

Vice Chairman Coyner asked for discussion. All were in favor; no one was opposed.

The Commission stopped the meeting at 11:58 a.m. to take a lunch break for approximately one hour. The Commission reconvened at 1:17 p.m.

Vice Chairman Coyner moved to the eighth regulatory petition on the agenda. Doug Zimmerman from the Bureau of Safe Drinking Water presented the regulation to the Commission.

### **(8) Regulation R126-05: Public Water System, Water Quality and Treatment of Water:**

(Note: the State Health Division filed a previous version of this regulation as a temporary regulation on March 28, 2005. The regulation has been slightly altered and is now proposed as a permanent regulation.) This regulation amends NAC 445A.450 through 445A.540. The amendment allows Nevada to adopt new federal primary drinking water regulations already in effect under the Safe Drinking Water Act (SDWA) in the following areas: arsenic rule; long term 1 surface water treatment rule; lead and copper rule revisions; radionuclides; filter backwash rule; public notification rule; and variances and exemptions.

The amended regulation also provides criteria for projects that propose treatment facilities for groundwater. Of note, USEPA requires states with regulatory jurisdiction to assure design and construction of new water treatment facilities are compliant with primary drinking water regulations. The remaining amendments add definitions, seek to provide clarity, change authority from the Division of Environmental Protection to the health authority, where health districts would have authority, and provide only enforceable (and delete more stringent) secondary standards for water quality.

The estimated beneficial economic effect of the proposed regulation on the business community and the public would decreased medical costs that otherwise might be incurred as a result of exposure to contaminants in drinking water.

There is likely a significant adverse economic effect on small business although such impacts would not be borne evenly among privately owned public water systems such as mobile home parks. The impact borne by any particular water system will be dependent on the source of water quality and the quality as well as the availability and cost of alternative water sources. The likely significant impact will be associated with costs to comply with the new arsenic concentration standard of 10 parts per billion (ppb), reduced from 50 ppb, which becomes effective in January 2006. This standard will apply to all public water systems except transient, non-community systems, which are defined as non-community water systems that do not regularly serve at least 25 of the same persons over six months of the year. Cost impacts might include developing an arsenic compliance plan, finding and developing new water sources, purchasing water from another water system, blending water from two or more sources, or implementing treatment to reduce arsenic levels.

The State of Nevada has, under an agreement with the United States Environmental Protection Agency, primary enforcement responsibility (primacy) for the primary drinking water regulations promulgated pursuant to the federal Safe Drinking Water Act. The State of Nevada must adopt regulations as stringent as the federal regulations to retain primacy, and must remain current with new regulations necessitated by amendments to the Act. Other than adopting such primary drinking water regulations, there is no duplication or overlap of these regulations with other state or government agencies. There will be no additional cost to the agency for enforcement of the proposed regulation and the regulation does not address fees. (SEC Petition #2005-06)

**NOTE:** A copy of the outline of Doug Zimmerman's presentation is included as appendix #8.

## **SEC Discussions & Staff Responses**

Commissioner Crawford was concerned that the Health Division's regulation will expire on November 1<sup>st</sup>. John Walker, S E C Executive Secretary, explained that SB 395 allows the regulations that existed previously to be enacted if this regulation does not pass.

Commissioner Ricci wondered if NDEP would have authority, if the regulation did not pass. Mr. Zimmerman assured the Commission that NDEP would be in place with the authority.

Commissioner Henderson asked how the drinking water standards drive the water quality standards across the State, for example, like surface water. Tom Porta, Deputy Administrator for NDEP, said the Division considered this question as well to see if there was a link with establishing drinking water standards and surface water standards. There was no simple way to do this so it was decided to leave the water quality standards as they are now, which is 50 in regards to arsenic. The rule states that the surface water that has been designated for drinking water, with conventional treatment, must be able to make it drinking water. The conventional treatment today is much better than it was 20 years ago, so the Division will leave the water quality standards as they are currently.

Vice Chairman Coyner requested Mr. Zimmerman explain the relationship between the Division and the appropriate District Board of Health, as it appears repeatedly in the regulation in terms of approvals, process, who reports to whom, etc. Doug Zimmerman proceeded with explaining that Washoe and Clark Counties are the only counties where a District Board of Health exists. These District Boards of Health have authority to enforce certain provisions and are the lead regulatory agencies for certain programs within those counties. The Division has contracts with those Counties to implement portions of the drinking water programs.

Mr. Zimmerman continued by stating that when there is reference to the appropriate District Board of Health, it is the Board of Health that is taking the lead and replacing NDEP as the lead regulatory agency within their jurisdiction areas.

Andrea Seifert, Safe Drinking Water, explained that if a design for a facility were to be reviewed, Washoe County would do the reviewing of plans, field work, and approving plans, but NDEP would retain primacy over issuing the permits and overseeing what Washoe County does.

Commissioner Rackley asked if section 2 in the regulation would require a sanitary survey on all public water systems, including ground and surface water. Ms. Seifert explained that the recent regulations would require more frequent sanitary surveys in the federal language so NDEP had to make sure their regulations were as stringent. The minimum frequency for these surveys is three to five years; however these are conducted more frequently.

Doug Zimmerman further explained there are many varied different classes of water systems within the regulations. The classes vary depending on how many people they serve during a year, how many connections for year round use they have, transient and non-transient community systems which would be a restaurant or bar.

Commissioner Crawford wanted to know if this is self-funded. Mr. Zimmerman said there are a number of sources, with the primary being the Safe Drinking Water Grant from the US EPA. Other sources that fund the program include permit fees and operator certification fees, a small general fund allocation, and fund transfers from the State Drinking Water Revolving program.

Commissioner Rackley questioned if the 601 systems in the State had assessed how the local government would absorb the costs of reducing the arsenic level from 50 to 10. Burt Bellows, Bureau of Safe Drinking Water, Arsenic Compliance Officer for the State, approached the podium to discuss this question. He said this will be an impact on the smaller systems, some of whom have arsenic levels of 35 ppb to excess of 200 ppb. They will have no way to fund the treatment to lower the arsenic levels to the new standards.

Mr. Zimmerman added they are anticipating about 100 variances to come in. The Bureau staff is helping the water systems with variance packages. It looks like the cost for the treatment systems is up around \$350 million for these small communities. The variance extension process may extend this process out to the year 2015.

There are some other alternatives, continued Mr. Zimmerman, referring to a Point of Use treatment, which is the use of a reverse osmosis system at the tap. This might be a viable alternative.

There are about 30 systems that will fall under a bilateral compliance agreement. Their arsenic levels are high enough above 35 ppb that they can't qualify for an exemption. Under the compliance agreement, these systems will be under an enforceable document by which they will have to put in treatment/point of use. They will be the priorities because they have the highest risk to public health.

Private system or individual/home-owner wells are not subject to this. Public water systems are what this is for. Patty Lechler, Environmental Health Specialist, explained the three different classes of water systems: community, which is broken down to include the non-community. This non-community group is further broken down to include the transient and the non-transient non-community (this includes a business where people go at least six months out of the year but do not stay; i.e., day care).

Commissioner Crawford expressed his concern regarding the Commission dealing with the variances because of the time restraints needed and the Commission's qualification, even with good qualified staff reporting to them. He asked if a process could be established with a set of rules for variances that the Division implements and the Commission deals with extreme exceptions or appeals, and can the Commission use the Advisory Board for assistance. He can foresee a lot of meetings, especially in the beginning for variances.

Doug Zimmerman explained that the Advisory Board would most likely not be a resource for this, as they work on the operator certifications. He added that when variances would be brought to the Commission, the requests would fall into certain groups. The idea is to package water systems that have certain conditions associated with them and present those in a bundle as opposed to individually. There are guidelines at the federal level that will be used to determine what systems qualify, so it should not be as burdensome a process since they will be grouped together. Staff will be presenting the variances to the Commission with a recommendation for approval or denial.

There is assistance available such as the Nevada Rural Water Association, and others that will help these systems to comply. There are time limits for applications (January 23, 2006) that are driven by federal regulations. There are also time limits for the exemptions that are given and they are based on the population of the system and its historic arsenic level. Those with lower levels could get the original exemption of three years and then they can apply for an extension of that exemption of two years, up to three times, for a maximum of nine years. But, they must have low levels of a mcl of 10 ppb of arsenic.

Those systems that are higher, of 10-35 ppb, will have only three years and will have to be compliant in 2009. The systems in the middle will have to be compliant by 2011, 2013, and 2015. The guidelines are given by the US EPA in the Arsenic Guidance Manual, and each application will be processed according to these guidelines.

Doug Zimmerman continued. The exemptions are extensions of time to come into compliance. Variances are, after going through the best technology possible, you still cannot get into compliance. The variance would allow a system to continue to operate under specific

conditions, so long as public health is not at risk and the system would still seek ways to become compliant.

Commissioner Crawford expressed his concerns about accomplishing the requirements. NDEP Administrator Leo Drozdoff said he believes a subcommittee or a smaller member panel would work, but that the Commission could not delegate everything to the Division. Mr. Drozdoff continued by stating that everyone seems to be going into this with their eyes wide open and that they will be able to have the bundles of packages for the Commission or subset of the Commission in advance of the regulation date.

Commissioner Crawford agreed but would like to find a way for this to be dealt with outside of the Commission. Vice Chairman Coyner asked Attorney David Newton to look into the possibility of having a panel to grant variances or if only a full Commission can.

Commissioner Zimmerman stated that it appears the regulation clearly defines who can receive exemptions and those can be packaged together to simplify it. NDEP Administrator Leo Drozdoff agreed, and said he believes there are other tools available to deal with adversarial issues. The non-adversarial will meet the specific criteria. He feels the Division will be bringing to the Commission, the communities that meet the requirements for the exemption and are not adversarial.

Commissioner Rackley asked about the systems that are over 35 ppb and if they would have to approach the Commission. Doug Zimmerman said they would be out of compliance with the Safe Drinking Water Act and would be subject to enforcement action.

Commissioner Stephanie Zimmerman said she sits on the Board that is working on AB 198 program and they are trying to figure out how to distribute the grant funds because there are so many small systems that need help. The exemptions will help the small systems to see what others have done, what was more cost effective, and what worked best. It will help the smaller systems to keep from wasting money on programs or equipment that doesn't work.

Doug Zimmerman added that the small systems would have to hire a certified operator to operate them at an additional expense, so the point of use devices that can be used just at the kitchen sink could be the resolution. If the systems over 35 ppb don't meet the January 23<sup>rd</sup> date, the enforcement agreements will become enforcement actions, although their water will not be turned off.

**Vice Chairman had the Commission move forward onto Section 5 of the regulations.**

Phil Walsack, Far West Engineering, technical assistance provider for the rural communities in Nevada through the State Revolving Loan Fund Technical Assistance Program approached the podium. The 1.5% median household income is derived from Housing and Urban Development (HUD). This percentage is a water rate that should be appropriate for a community based on 22,000 gallons of water used per month.

**Vice Chairman Coyner continued the discussion to Section 6.** Vice Chairman Coyner talked about requests coming in from systems who will say they have absolutely no money and would like a variance. If they don't meet the affordability criteria, they can still come before the Commission and say they need a variance. He continued with his agreement to help the small water systems who will take a financial hit from this. The Vice Chairman said

the easier the Commission and Division can make it for them to get a variance, it is ok with him.

Commissioner Ricci asked about the substantial property right. Deputy Attorney General (DAG) David Newton explained that it could refer to someone who is trying to sell their property and there is an enforcement action against the water authority that supplies water to the property. This could affect the sale of the home.

**Vice Chairman Coyner asked if there was any more discussion for Sections 6 or 7. There were no further comments so he moved the meeting on to Section 8.** Doug Zimmerman spoke about sections 8-22 regarding the treatment and blending of ground water that is required to meet primary or secondary standards.

Commissioner Rackley asked about the pilot study in section 11. Andrea Seifert, Engineer for the Bureau of Safe Drinking Water, approached the podium. She stated that every water system will have different water quality characteristics that could pose a different condition for the treatment of that water. She said that if systems have water with similar water quality characteristics, the Division may be able to look at that in lieu of a pilot study at their facility. But, if their water quality characteristics are unique then they would have to do a pilot study, it would ensure they do not build a treatment plant and spend millions of dollars without really knowing if the treatment process they are installing is going to work.

Vice Chairman Coyner expressed his difficulty in seeing how sections 9 & 10 fit/work together. He felt it would be easier to understand if there were headers, a diagram box or something to help differentiate them.

**Vice Chairman Coyner continued the discussion to Section 11, 12, 13, etc.**

Commissioner Crawford asked about the portion of 14-1d that states it must be designed to mitigate the effects of such events that are “reasonably foreseeable.” He asked for clarification of who decides what is considered “reasonably.” Andrea Seifert answered by stating that on certain maps that are provided, the Division and Commission would know where seismic zones someone would fall into, if they are subject to flooding by the location of the 100 year flood level mark would be. This is a set standard the Division would go by.

**Vice Chairman Coyner continued the discussion to Section 15, etc.** Doug Zimmerman talked about the time limit between the approval time and the beginning and completion of construction. Commissioner Rackley was concerned about the one year limit on the construction with the possibility of getting one year extensions for it, as that might lead to a company doing minimal work, then just continuing to get extensions. Ms. Seifert said their plans would have to be reviewed again to see if their plans are in compliance with any new regulations that may be in effect.

Commissioner Rackley wanted to know if there should be a limit, such as five years, for the completion of the construction. Andrea Seifert said she would be more concerned with whether or not the original person who signed off on the plans was currently a professional engineer in Nevada.



**Vice Chairman Coyner continued the discussion to Section 16-22.** Doug Zimmerman gave a brief explanation of items 16-22. Vice Chairman Coyner said the sections they just went through were for Ground Water and that the Surface Water regulations already exist. Andrea Seifert said the next few sections discuss some treatments for Surface Water. Ms. Seifert added that the Ground Water systems are considered like a Surface Water system so all the regulations that apply to Surface Water systems apply to Ground Water systems under the direct influence.

**Doug Zimmerman continued with Section 23.** Vice Chairman Coyner clarified with Mr. Zimmerman that Primary Standards affect Health, and Secondary Maximum Contaminant Levels are aesthetic (taste, odor, staining, etc.).

**Vice Chairman Coyner continued the meeting with Section 23-50.** Vice Chairman Coyner spoke about item # 3 where it says the Division or the appropriate District Board of Health may require a higher degree of treatment. He wanted to know if they could over-rule the Division, and who would be primary. Andrea Seifert said whoever was more strict would be primary. Patty Lechler said that the area where the Washoe County District Health has enforcement authority, then they would make the decision. As for the rest of the state in our authority, the Division would have the final say.

Vice Chairman Coyner asked why # 4 says we will not grant a variance. Andrea Seifert explained it was because this was applying to surface water systems which have acute contaminants and the Division will not grant a variance if people could get sick from viruses, giardia, e-coli, etc.

**Vice Chairman Coyner continued the meeting with Section 51.** He asked about the wording for this section. Ms. Seifert expounded on the reasons for wording that appears redundant. She said that surface water systems have had treatment regulations since about 1995. When they noticed that there were more ground water systems that would have to treat water due to this arsenic rule, they felt there should be comparable regulations for ground water systems. There are subtle differences between the two types of treatment regulations.

Commissioner Crawford spoke regarding section 48 – 2, asking if listing a price was necessary because it would require a meeting with the Commission each time the price changes. An answer was given that NRS 233 requires said prices to be listed. Commissioner Crawford felt the price and addresses should not be listed in the regulations, but maybe it could be put on the website instead. Doug Zimmerman asked the Executive Secretary, John Walker, if he would approach the LCB with this idea.

**Vice Chairman Coyner continued the meeting with the Sections.** Commissioner Ricci asked about Radon and if there were any regulations being worked on for its treatment. Patty Lechler said the Radon issue is complex and the EPA is trying to implement the rule by combining it with air exposure.

## **PUBLIC COMMENTS**

Vice Chairman Coyner asked for public comments regarding petition 8. Debby Kaye, Operations and Maintenance Manager for the Truckee Meadows Water Authority (TMWA) in

Reno, approached the podium. Ms. Kaye said that during this meeting she noticed the desire of the Commission to learn more about the drinking water regulations and what is going on with arsenic.

Ms. Kaye shared that she will be stepping in as the Chair of the California/Nevada section of the American Water Works Association (CA NV AWWA) next week. She extended an offer to the Commission to attend a conference the next week in Reno on October 12, 13, & 14. Allen Biaggi will be speaking and doing the opening session. Alexis Strauss from the EPA will be speaking at the Keynote lunch. There will be a whole track on arsenic, and one of the tours will be going out to look at the Fallon Arsenic Treatment Facility. She said they would comp the tickets for anyone who would like to attend. She will leave a list of names at the registration area.

Vice Chairman Coyner asked Debby Kaye how she felt about the regulation. She said TMWA has known for some time that the arsenic allowable levels would be changing but they did not know what number for ppb it would end up at. They have a compliance plan in place and were able to apply for some of the State Revolving Fund loan.

They are fortunate, as they have surface water and their plan calls for some blending, using some surface water and they have some treatment technologies that they are going to be doing. She feels that the fight was strong in the beginning, and now they ask where they go from here. One of the things she feels there is an opportunity for is improved treatment technologies, and there have already been big improvements in this area. Eventually, the treatment technologies will be more affordable, as there are some very bright people in the industry that are working on coming up with solutions. Ms. Kaye added that it is not just Nevada, Arizona and California are all resolved to help find a way to make this work.

Commissioner Henderson asked if there was a website available to get more information regarding the conference. Ms. Kaye said there was at [ca-nv-awwa.org](http://ca-nv-awwa.org) and this conference has several tracks dedicated to arsenic.

Vice Chairman Coyner asked if there were any other comments. There were none so he asked for a motion.

## **SEC ACTION**

Commissioner Henderson made a motion to adopt LCB R126-05, with the understanding that this is a new responsibility to the Division and to this Commission. He feels the Commission has to rely on staff to get it under way. It will be a process of refinement and updates as new requirements come down the road. Commissioner Henderson added that he is impressed with how closely staff has worked with the water purveyors to pull this together. Commissioner Shull seconded the motion. All were in favor; no one was opposed. The petition was adopted with the typographical correction in item # 24.

**Vice Chairman Coyner paused the meeting for a 10 minute break at 3:25 p.m. and resumed the meeting at 3:39 p.m.**

**(9) Regulation R129-05: Revises Certification of Operators of Public Water Systems:**

*(Note: the State Health Division filed a previous version of this regulation as a temporary regulation on March 28, 2005. The regulation has been slightly altered and is now proposed as a permanent regulation.)* This regulation amends NAC 445A.617 through 445A.652. The amendment proposes changes to Nevada's Operator Certification Program for small water systems. Increased skills and knowledge would be required to operate public water systems for individuals certified thorough the Operator Certification Program. The program is managed by the Division of Environmental Protection - Bureau of Safe Drinking Water. The amendment is needed in light of more stringent water quality requirements. Ultimately, the goal of the operator certification program is the protection of public health.

The State of Nevada has, under an agreement with the United States Environmental Protection Agency, primary enforcement responsibility (primacy) for the primary drinking water regulations promulgated pursuant to the federal Safe Drinking Water Act. The State of Nevada must adopt regulations as stringent as the federal regulations to retain primacy, and must remain current with new regulations necessitated by amendments to the Act. Other than adopting such primary drinking water regulations, there is no duplication or overlap of these regulations with other state or government agencies.

This amended regulation would have a beneficial economic effect by increasing the knowledge base of operators of small water systems; such increased knowledge of water system operations will result in both immediate and long-term protection of pubic health.

The estimated indirect adverse economic effects of the proposed revisions on the small businesses would apply to public water systems that require a Grade III or Grade IV Certified Operator. This indirect economic effect would be from new, higher requirement for post-secondary education required to qualify for new Grade III and Grade IV certifications. There will be no additional cost to the agency for enforcement of the proposed regulation and the regulation does not address fees. (SEC Petition #2005-07)

**NOTE:** Doug Zimmerman, Chief of the Safe Drinking Water Bureau presented the petition to the Commission. A copy of Mr. Zimmerman's presentation is included as appendix #9.

**DISCUSSION:**

Doug Zimmerman introduced Phil Walsack, Farwest Engineering, representing the Operator Certification Working Group in the capacity of a subcontractor to the Division. Mr. Walsack complimented Doug Zimmerman's knowledge for the length of time he has worked in the Safe Drinking Water Program.

Mr. Walsack continued by stating that four years ago, the regulations for operator certification were discussed at a public hearing before the State Board of Health. During the public comment period, many utilities had major issues with the regulations. The Bureau of Health Protection Services at that time realized it was probably out-gunned as far as their staffing levels went. They only had 17 staff members and there were hundreds of certified operators and managers. They needed help so they had the water professionals within the State of Nevada write them.

The Advisory Board was tasked by the State Board of Health to look at the regulations. They developed a seven member sub-committee with the working group, five of whom are at the meeting today. They developed these regulations from scratch after reviewing many states west of the Rockies. This regulation is very different from other regulations as it was written by water professionals in the field.

Phil Walsack added that they kept in process with the Advisory Board quarterly, and asked them how they felt about their ideas, what they should add, and how they should build it. There was a lot of public input, approximately 20-25 public workshops, meetings, presentations, AWA events, and field trips to discuss the regulations with operators. It is a very different set of regulations than they had previously.

Mr. Walsack told the Commission that he or any of the people who came to the meeting would be happy to answer any questions the Commission may have. On a positive note, the regulations are shorter than the previous regulations. There were no questions from the Commission.

Doug Zimmerman introduced Darrin Price, Public Works Director for the Sun Valley General Improvement District. Mr. Price is the Chairman of the Advisory Board on Operator Certification.

Darrin Price said they did report to the Bureau of Health Protection Services. He has been on the Board for about six years, during that time he has reported and worked with approximately four people in Doug Zimmerman's position.

Mr. Price said that at some point in time, other Advisory Board members will attend the Commission meetings and introduce themselves to establish a relationship with the Commission because water is our life. Everything they do revolves around operator certification and water in the State of Nevada.

Many small systems (serving 500 people or less) are not affected by these regulation changes. Those that are affected, the larger systems, at some point in time will be affected either by population or something else. It will be based on complexity. The Board make-up is of water professionals of varying sized systems from all over the State.

Mr. Price ended his presentation by stating they are asking the Commission to approve these regulations, and if anyone had questions, he would be happy to answer them.

Doug Zimmerman returned to the podium to discuss two amendments for the Commission to consider. The first amendment, pg. 14 section 16 of the regulation, on the distribution side of classification of the water system.

An Incline GID (General Improvement District) provided much of the comment on this because they found they were ranked as complex a distribution system as Las Vegas. They are smaller system but there are issues of complexity because they are a mountainous community and the number of pressure zones they have effects how the system is ranked. There are eight or nine criteria by which a system is ranked.

The sub-committee worked with Incline and there were various proposals presented back and forth. The differences in pressure zones and what to cap the points at were discussed. The resolution to this ended up being a ripple effect. This was to increase the points that change the minimum point score from a class IV Distribution System (from 41 to 42 points).

Doug Zimmerman wanted to read a letter from Dan St. John from the Incline GID, who was at the meeting earlier but could not stay. The letter stated, "We support the proposed rules with the minor changes to the distribution and treatment point system. We believe the minor tweaks better address specific circumstances of systems, which rely on exemption of filtration or surface water. Overall, we applaud your efforts to strengthen the NAC and provide a more logical nexus between the technical challenges presented by a water system and the level of technical competency and experience needed to operate it responsibly and safely."

**Mr. Zimmerman continued on to the second amendment.** This came out of the workshops and is an Incline GID issue. It is found on the next page of the regulations. This is more for the treatment side of the matrix. If a system has ozone, it is given eight points and if ultra violet light were used, then they would get eight points. If both were used, then they could get 16 points.

Las Vegas was used as an example and it was pointed out that a complete filtration system only got a score of 10 points. A general consensus was that if a system has two levels of treatment, then this scoring system of giving them a 10 instead of the 16, they could continue to remain in a Class III treatment system. This would work for Incline GID as well.

## **SEC Discussions & Staff Responses**

Vice Chairman Coyner asked if there were any questions from the Commission. There were none.

## **PUBLIC COMMENTS**

Darcy Burke, Executive Director for the California-Nevada section of the American Water Works Association, approached the podium. She said this is the 19<sup>th</sup> or 20<sup>th</sup> revision and it used to be in colors so it was easy to tell the old version from the new. There is also a linkage to the classification of the system, of the complexity, to the range of knowledge expected for that level of operator. It is called an Occupational Analysis.

It is something that the Advisory Board requires the California-Nevada section, as Administrators of the program, to do. When the Commission was talking about ozone, UV, conventional treatment, pigging, and emergency response, all of those elements tie in to the level of the system as well as the minimum level of competency of the operator. That is what certification is, it is not expertise, it is a minimum level of competency. It was a long process to make sure that public health is ensured at the basic level, so the operator maintains the minimum level of competency to ensure the health of the customers he/she serves by maintaining that system in that complexity. The system classification and the treatment classification are found in this part of the regulations, and not in the section that was just covered.

Vice Chairman Coyner asked Ms. Burke how well she feels rural Nevada is equipped to meet these standards. Ms. Burke said she thinks we are better off than most states. She sits on a board that would be equivalent to the Op Cert Advisory Board in the State of California and Nevada is ahead of the game, compared to CA. They developed a special classification for the small system operator and required more of that individual with less training opportunities. Nevada has the Nevada Training Coalition, Comprehensive Circuit Writers System, and Nevada Rural Water that has fewer systems to cover than California Rural Water, so Nevada is better equipped than most states. Nevada also has exemptions and variances for the small system operators that a lot of other states don't have.

Darcy Burke added that part of the Safe Drinking Water Act the authorization required was that certain elements be met in the Operators Certification Program. One of them was limited grandparenting. This has not changed so the people who have been operating a system for the last 20 years, who weren't certified through an exam, if they are still around, they can still operate the system. But, there will be a crunch to fill vacancies when these people retire.

Commissioner Ricci asked about the certification. Ms. Burke said the California-Nevada certification test is different than the Nevada test. To be a Grade 4, the California-Nevada requirements are eight college level courses but in Nevada, the requirement is only four.

Commissioner Henderson asked about the fee establishment for the State of Nevada. Ms. Burke said she does not have the answer to that.

Steve Brockway with the Bureau of Safe Drinking Water approached the podium. He said he was not personally involved when the fees were established. He added that much of the fees were based on staff time. The exams we give are purchased through the American Water Works Association. Previously, the fee for taking the exam was \$40 but the cost was \$40 for the exam. There were also part-time secretarial costs involved.

Commissioner Henderson asked for Mr. Brockway's best guess at when the Division would have to renew and update the tests. Steve Brockway said the \$40 fee was established in 1992, and was just changed this year to \$84, when some states charge over \$100.

Vice Chairman Coyner asked if there were any other public comments. There were none.

## **SEC ACTION**

Vice Chairman Coyner asked if there were any questions or comments from the Commission. There were none so he asked for a motion. Commissioner Shull made a motion with the proposed amendments. Commissioner Rackley seconded the motion.

Commissioner Henderson asked if the proposed amendments include changing on page 14 from distribution 3 from 31 to 41. Vice Chairman Coyner said it includes the amendments from 41 and 42, and the ozone and the ultraviolet light.

Vice Chairman Coyner asked for a vote. All were in favor; none were opposed.

Leo Drozdoff, Administrator for Nevada Division of Environmental Protection (NDEP) approached the podium for a briefing.

Deputy Attorney General (DAG) David Newton stated for the record that the briefing from Leo Drozdoff was not listed in the Agenda. He does not see it as a compliance problem but he did want it on the record. Vice Chairman Coyner voiced his interpretation from reading a section that said "briefing to/from the Commission and the DAG," was that someone was briefing the Commission and the DAG, and that person was Mr. Drozdoff.

Leo Drozdoff gave his appreciation to the Commission for setting aside time to make the meeting, as the temporary regulation clock is ticking, so the Division was getting concerned.

Mr. Drozdoff explained a dramatic change in senior management at NDEP, starting with himself as Administrator. He added that there are two relatively new Deputy Administrators

Tom Porta, who spoke earlier, was the Bureau Chief of the Bureau of Water Quality Planning, and before that had over a decade of experience in the Air programs. Tom Porta oversees the water programs, such as the Bureaus of: Water Quality Planning, Water Pollution Control, Safe Drinking Water, Mining Regulation & Reclamation, and Corrective Actions.

The second Deputy Administrator is Doctor Colleen Cripps. She has extensive experience in the Bureau of Waste Management, and most recently was the Chief of Air Quality Planning.

As everyone changed roles, it created vacancies in their previous positions. Dr. Cripps' position was filled by Jennifer Carr, who was a supervisor in the Bureau of Corrective Actions and also had a number of years in the Bureau of Water Pollution Control writing permits.

The other Bureau Chief hired was Kathy Sertic. She worked for Mr. Porta for a number of years in the Bureau of Water Quality Planning. Mr. Drozdoff said she is the Division's resident expert in that program.

Mr. Drozdoff continued with the Bureau of Safe Drinking Water that recently joined NDEP. A few weeks later that Bureau's Chief position became vacant and Doug Zimmerman expressed an interest in moving to that Bureau.

Leo Drozdoff said he and Mr. Porta were thrilled when Doug Zimmerman asked for the transfer because bringing over a series of new programs and new employees is an integration. Although the staff is impressive, Doug Zimmerman will provide a good transition point. He will be able to build on the number of programs he has managed in the past and will make the transition as seamless as possible.

When Doug Zimmerman left his post in the Bureau of Waste Management, Mr. Eric Noack was promoted into the position. Mr. Noack has a great deal of experience outside of the Agency setting up offices, worked for the Agency for a number of years in the Federal Facilities Program and the Bureau of Corrective Actions.

Mr. Drozdoff mentioned that he feels quite fortunate to have the senior staff with Mr. Porta and Dr. Cripps, and the Bureau Chiefs. He believes they will serve the State, himself, and the Commission well.

Administrator Drozdoff extended an invitation to the Commissioners to see the new building that houses NDEP. Overall, he feels the building will serve NDEP well.

Leo Drozdoff talked about Legislative updates. Three bills that the Division was proposing came to fruition.

The first is SB16. This allowed some of the gas taxes that are used to fund some of the Underground Storage Tank programs to be used in the Environmental Response Program. The Division will be able to hire a contractor with some of the money, as well as add a new staff person.

Regarding SB395 and the transfer from the Health Division. Mr. Drozdoff said the Division worked well with the State Health Division and the budget process was seamless.

SB396 was a clean-up of the Waste regulations. It dealt a little with the problems the Division had with Western Elite issues. They are now permitted.

Another issue was a variance that had allowed hazardous waste facilities to build a facility without a liner. The Division worked through the Legislature to have that exemption removed. It is a positive step.

In regards to workload, the Air programs have three powerplants in various stages of consideration. They are: Sempra in Northern Washoe County, LS Power in White Pine County, and Sithe Global just above the Clark County border in Lincoln County. Having three of these going at one time is unprecedented.

Mr. Drozdoff discussed the Division's Mercury Control Program. A few years ago, there was a voluntary Mercury Control Program and the current Program is a natural progression from the first. There is tremendous support and the plan is to move forward with a full-fledged permitting program to address mercury air emissions associated with precious metal mining activities in Nevada.

Mr. Drozdoff noted that the Mohave Generating Station in southern Nevada is scheduled to shut down this year. The only way any part of it will continue to operate will be to do "peaking" with natural gas. They will continue to maintain their permit while in "temporary closure."

Administrator Drozdoff moved the subject matter to some Mining programs. The Mining group is working on the Gold Quarry site. The Division formed a panel of experts to determine if there is a systemic problem going on and there should be a report made public by early November.

Dave Gaskin, Chief of the Bureau of Mining Regulation & Reclamation (BMRR), has been overseeing a several year effort the Division refers to as, "The Standardized Unit Cost." Mining Companies spend a lot of time developing bond estimates and the Division spends a lot of time reviewing them. The Standardized Unit Cost effort will allow each facility to come up with a dollar amount based on the quantities of earth being moved by putting the numbers into a spreadsheet. This will save the Mining Companies and the Division a lot of time.



In closing, Mr. Drozdoff commented on SB17, a new law that requires all regulatory actions be reviewed by a legislative panel. The Division does not oppose the reasoning behind this law but has opposed this based on the tremendous burden and time it will put on the processing of regulatory actions. This extra panel overview could add delays, and this may cause difficulties with temporary regulations, sunset calendar, etc. As a result of the Division's testimony, an allowance was added for the Governor to call for an Emergency Hearing.

Commissioner Ricci wanted to know the reasoning for this law because it seems the riggers that the Division and the Commission go through should be sufficient. Mr. Drozdoff explained that a number of governing agencies don't have a board or commission to ensure due process. A lot of regulations get written by the agencies and the agencies become the judge and jury, which results in a lot of frustration. He added that with the number of regulatory bodies and oversight commissions that actually do perform well, he doesn't see the value added.

Commissioner Henderson asked if the Legislative Body had been appointed yet. Mr. Drozdoff said he had not heard of it yet. No one on the Commission had heard of it either.

Vice Chairman Coyner asked if there were any questions or comments for Administrator Drozdoff. Commissioner Henderson added that he was really impressed with the two regulations that came from the Health Division, and how they involved the industry. It was a lot of work and they did a good job.

Vice Chairman Coyner asked for a motion to close the meeting. Commissioner Ricci made a motion; Commissioner Shull seconded the motion. The meeting closed at 4:40 p.m.

## **APPENDIX**

### **APPENDIX A) Air Pollution Control Notices of Alleged Violations**

**BALD MOUNTAIN MINE** operates an open pit mine and a gold ore processing plant located 60 miles SSE of Elko, in Huntington Valley, White Pine County, Nevada. The facility operates a Carbon Regeneration Kiln, a Mercury Retort and a Bullion Furnace.

On December 9, 2003, the Nevada Division of Environmental Protection – Bureau of Air Pollution Control issued Air Quality Operating Permit AP1041-1362 to Bald Mountain Mine. AP1041-1362 requires that Bald Mountain Mine complete source testing and Demonstration of Initial Compliance testing for Systems 01 and 03 within 180 days after the permit's date of issuance.

On May 2 – 3, 2005, Bald Mountain Mine conducted the required testing. Source test results demonstrated the System 01 Carbon Combustion Kiln (S2.001b) exceeded the permitted emissions limits for Carbon Monoxide (CO).

Because any emissions in excess of permit limits violate the permit, NDEP/BAPC issued Bald Mountain Mine Notice of Alleged Violation (NOAV) No. 1963.

Bald Mountain Mine has agreed to pay the administrative penalty of Six hundred dollars (\$600.00) for the above named violation.

Bald Mountain Mine has no previous history of non-compliance with the NDEP/BAPC.

### **CAITHNESS DIXIE VALLEY, LLC**

Caithness Dixie Valley, LLC (Caithness) operates a geothermal power plant located approximately 68 miles northeast of Fallon, NV in Churchill County. A Class II Air Quality Operating Permit AP4911-0756 was issued on February 11, 2002.

Caithness failed to submit Annual Compliance Certifications for the years 2000 through 2004.

Caithness was in violation of Nevada Administrative Code (NAC) Section 445B.275  
“Violations: Acts constituting; notice.”

NDEP assessed an administrative fine of eight thousand one hundred dollars (\$8,100.00) for the alleged violation. Caithness’ has agreed to pay an administrative penalty of eight thousand one hundred dollars (\$8,100.00) for the above named violations

At present, Caithness is in compliance with all applicable air quality regulations. Caithness has had no violations in the last five years.

### **HARVEY’S RESORT HOTEL/CASINO**

Harvey’s Resort Hotel/Casino (Harvey’s) operates four boilers to provide heat and hot water to their resort located at Stateline Avenue and Highway 50, Stateline, Nevada (Douglas County). A Class II Air Quality Operating permit was issued on May 15, 2000.

The Nevada Division of Environmental Protection, Bureau of Air Pollution Control (NDEP) contacted Harvey’s and informed them that their Air Quality Operating Permit AP7011-0115.01 would expire on Sunday May 15, 2005.

Harvey’s was in violation of Nevada Administrative Code (NAC) Section 445B.275  
“Violations: Acts constituting; notice.” Harvey’s operated 25 days without a valid operating permit.

NDEP assessed an administrative fine of Two Thousand Seven Hundred dollars (\$2,700.00) for the alleged violation using the NDEP penalty matrix. Harvey’s has agreed to pay an administrative penalty of Two Thousand Seven Hundred dollars (\$2,700.00) for the above named violations

At present, Harvey’s is in compliance with all applicable air quality regulations.

### **H.E. HUNEWILL CONSTRUCTION COMPANY**

H.E. Hunewill Construction Company (Hunewill) operates portable crushing, screening, concrete, and asphalt plants throughout northern Nevada. A Change of Location Approval (COLA) No. 2021 was issued on May 24, 2005 for the temporary operation of a crushing and

screening facility located at the Nevada Department of Transportation pit EL 16-3, Elko County, Nevada. .

During a routine compliance inspection of the facility on June 15, 2005, it was noted that Hunewill was not utilizing the emission controls for the equipment as required by Air its permit.

Hunewill was in violation of Nevada Administrative Code (NAC) Section 445B.275 "Violations: Acts constituting; notice Hunewill was not operating with the required emissions controls.

Hunewill has agreed to pay the administrative penalty of six hundred dollars (\$600.00).

At present, Hunewill is in compliance with all applicable air quality regulations.

### **SOUTHERN CALIFORNIA EDISON COMPANY**

Southern California Edison Company (SCE) was issued a Class I air quality operating permit for the Mohave Generating Station (Mohave) in Laughlin, Nevada on February 28, 2003. The facility is an existing major stationary source and consists, generally, of two 790-megawatt coal fueled boilers with ancillary support equipment.

On February 28, 2005, Mohave submitted reports detailing throughput deviations and excess emissions for Unit S2.006 (lime silo); Unit S2.007 (lime silo); Unit S2.008 (soda ash silo) and Unit S2.009 (soda ash silo). Exceedances of the maximum permitted throughput limits are violations of the Nevada Administrative Code (NAC) 445B.275 "Violations: Acts constituting; notice"

NDEP/BAPC assessed an administrative penalty of Six Thousand Seven Hundred Twenty dollars (\$6,720.00) for the exceedances.

Mohave has agreed to pay an administrative penalty of Six Thousand Seven Hundred Twenty dollars (\$6,720.00) for the above named violations.

These were the first such violations within a 60 - consecutive month period.

### **APPENDIX 1) Connie Davis' presentation for LCB R097-05 Mining Reclamation Permit Modification and Fee Adjustments**

Chairman and members of the Commission, thank you for your time and the opportunity to make this presentation.

In April 2002, the Bureau modified the 519A regulations to include fees for a permit modification. Since then, industry has provided input that the fee structure did not consider simple permit changes. The Bureau worked with industry to develop changes that included: a modification to the fee structure for a permit modification, changes to the definition of minor modification, and added a definition for 'major modification.'

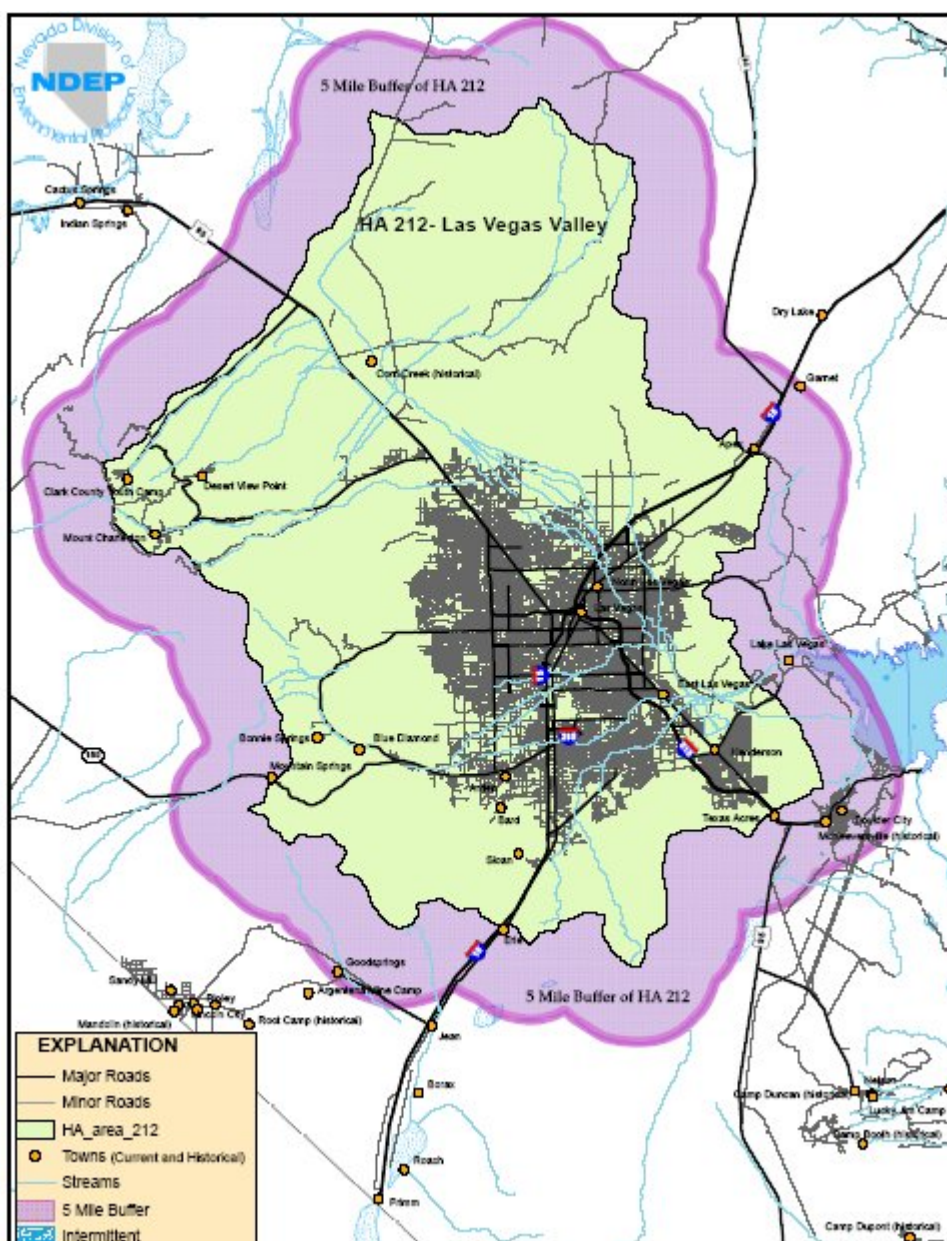
On June 10, the Commission reviewed and approved these changes as temporary regulations. We are now asking the Commission to adopt these temporary regulations as

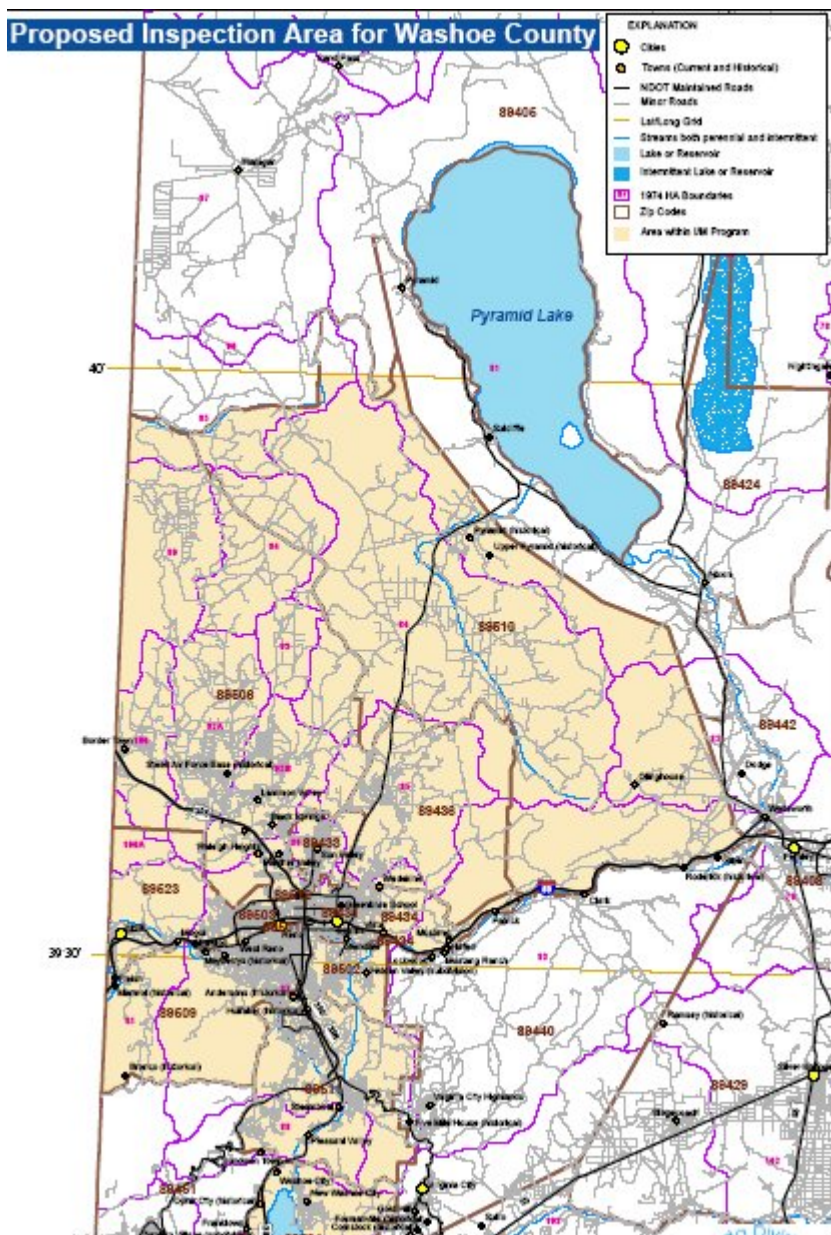
permanent regulations. The Bureau is not proposing any changes to the regulations that were presented in June. Everyone seems okay with the proposed regulations, as we have not received any comments.

**APPENDIX 2) Sig Juanarajs talk for LCB File No. R035-05, I/M Program, Temporary Regulation Change to Permanent Regulation**

- These temporary regulations were adopted late last year and resulted in two changes to that portion of the regulations covering the vehicle emissions inspection and maintenance program (smog check).
  - Bring diesel vehicles from 8500 lbs to 10000 lbs into the I/M program
  - Aligns the boundaries of the Clark Co I/M area with what is in the SIP and clarifies which areas in Washoe Co are in the program
- The regulation change did not change the size or scope of the program, however it provided the DMV (the implementing agency) with a tool by which they can decide with greater regulatory certainty if a registered vehicle on the rural fringes of the program areas are in the program
- Prior to this change, some vehicle owners in the rural areas of the county were receiving notices to have their vehicles smog checked because they share the same zip code with city dwellers.
- DMV would typically grant a waiver to these vehicle owner, but was doing so without specific regulatory authority
- In the few months that this temporary regulation has been in place, the DMV reports it has been an effective tool to help with making those decisions.
- LCB review resulted in no substantive changes

See geographic basin maps on the following pages:





### APPENDIX 3) Petition R037-05

Good morning Mr. Chairman, members of the Commission, my name is Greg Remer. I'm a permitting supervisor with the Bureau of Air Pollution Control. I'm here this morning to present Petition R037-05 (Item 3 on the Commission's agenda). This petition makes permanent the changes to the air quality regulations previously adopted in temporary form as Petition 2005-02 at the Commission's hearing in June, 2005.

### Section 1

This petition consists of an amendment to section 445B.221 of the code. This section lists updates to the Federal Regulations that the Commission adopts by reference. Although the Legislative Council Bureau subtly modified the language from that originally adopted in the temporary petition 2005-02 in June, no substantive changes were made from the



Commission's. However, we would like to point out that two previously included provisions were removed as technical corrections by LCB. The two provisions are in Subsection 3(b) (the reference to Subpart AAA for residential wood heaters is being removed) and Subsection 5 (the reference to Subpart M for Asbestos removal and clean-up is being removed). We wanted bring these to the Commission's attention. However, because these are technical corrections by LCB, no action is required by the Commission.

With that, we recommend that the Commission approve the changes as proposed in Petition #R037-05. I'd be happy to answer any questions at this time. Thank you.

**APPENDIX 4) State Environmental Commission, Petition R036-05-**

Good morning Mr. Chairman, members of the Commission, my name is Greg Remer. I'm a permitting supervisor with the Bureau of Air Pollution Control. I'm here this morning to present Petition R036-05 (Item 4 on the Commission's agenda). This petition is to make permanent the temporary regulation R2004-28 the Commission previously adopted in November of 2004.

Sections 1 and 2

This petition consists of amendments to sections 445B.22017, B.2202 and B.22023 of the code. These sections present requirements for visible emissions from stationary sources in general, exceptions to the opacity provisions, and opacity provisions for specifically identified sources. The purpose of the changes to these three sections is to provide technical corrections to regulatory references, which will allow EPA to approve these sections in our SIP.

Another purpose is to provide a future-effective sunset provision for the special opacity allowance in B.22023, which is a 30% opacity limitation. This regulation has historically been applicable only to Southern California Edison's Mohave Generating Station. This special opacity provision has been an impediment to EPA's full approval of our SIP. LCB views this sunset provision as a technical correction issue and we have confirmation of Southern Californian Edison's support of the change. Of note, the LCB drafted language includes a requirement that the Chairman of the Commission provide a notice of the date that the sunset provision becomes effective. However, the meaning and intent has not changed from that proposed by the Agency.

With that, we recommend that the Commission approve the changes as proposed in Petition #R036-05. I'd be happy to answer any questions at this time. Thank you.

**APPENDIX 5) Petition R096-05 Talking presentation:**

Good morning Mr. Chairman, members of the Commission, my name is Greg Remer. I'm a permitting supervisor with the Bureau of Air Pollution Control. I'm here this morning to present Petition R096-05 (Item 5 on the Commission's agenda). This petition is to make permanent the temporary regulation R2005-02 the Commission previously adopted in June of 2005.

Before I begin, in front of you there should be a document entitled "Item 5, Exhibit 1". The Division is providing this replacement due to errors in LCB's draft that could not be corrected prior to the Commission's package being mailed. I apologize that the corrections could not have been provided in your original package. If you would, I would ask that you please replace all of Item 5 in your package with Exhibit 1.

As indicated at the top of Exhibit 1, the matter which has been changed from the LCB draft is indicated in green and basically consists of changes to references that pointed to federal regulations instead of the NAC equivalent provisions. These changes are in Section 3 (lead-in sentence adding the reference to subsection 1(c) of Section 4; and sub-section 1 deleting the reference to federal regulation Part 52.21 and adding the reference to the Nevada Air Quality regulations) and Section 21 subsection 3 (by deleting the reference to federal regulation part 51.100 and adding the reference to paragraphs (a) and (b) of subsection 1 of Section 4. There are also two other minor technical corrections in Sections 4 (by adding the subscript g to H in subsections 1 and 2) and Section 12 (by deleting the term "kg/10" and adding the phrase "kilograms per million"). LCB is aware of these changes and has indicated that they concur that they are minor technical corrections. Other than these changes, the remainder of the proposed regulations in Exhibit 1 are consistent with those adopted by the Commission in June of 2005, with no substantive changes.

With that, we recommend that the Commission make permanent the temporary provisions adopted R2005-02 by approving Exhibit 1 in its entirety. I'd be happy to answer any questions at this time. Thank you.

#### **APPENDIX 6) Talking Points for SEC Presentation, Petition 2005-05, LCB File No. R106-05**

- Greeting and Introduction
- Petition 2005-05 proposes changes to the regulations covering the vehicle emissions inspection and maintenance program (NAC 445B.044).
- Petition was drafted in response to AB239; passed during the last legislative session.
- Paraphrase the change to NRS 445B.775 in AB239
- Explain what an "Inspection" and "Maintenance" (i.e. Test and Repair) program is and make the connection that Class I stations perform inspections and Class II perform maintenance
- State that the cleaning method must not violate the statutory requirement prohibiting Class I stations from performing the installation, repair, diagnosis or adjustment of any system of a motor vehicle that affects exhaust emissions.
- In developing the proposed regulation, NDEP sought out the advice of DMV Emissions, Automotive Technician Schools, Smog Check Industry Trade Organization, the Clark County Department of Air Quality and Environmental Management and the Washoe County Division of Air Quality Management
- Read the three line regulation change (or direct SEC's attention to the three lines)
- Workshops held on Aug 23rd in Reno and Aug 30<sup>th</sup> in Las Vegas; no objections were made; statements of support were received from a TMCC instructor, President of the Nevada Emission Testers Council, and the two counties
- Questions



## **APPENDIX 7 - Regulation for Above-Ground Marina Petroleum Storage Tank Systems**

### **Regulation R083-05 – SEC 10/04/05 Regulatory Hearing**

Background: In 2003, Senate Bill (SB) 58 was introduced to the Legislature. SB 58 was a bill to provide for certification of analytical laboratories. During the legislative session it was recognized that there ought to be regulations for unregulated aboveground petroleum storage tanks located near water. Consequently, to give the Nevada Division of Environmental Protection (NDEP) the authority to regulate marina petroleum storage tanks, an amendment supported by both NDEP and the Nevada Petroleum Marketers & Convenience Store Assoc, was added to SB 58.

Sec. 15 of SB 58 defines storage tank as follows:

“Sec. 15. NRS 459.820 is hereby amended to read as follows:

459.820 “Storage tank” means any one or combination of stationary tanks, including pipes connected thereto, used to contain and accumulate regulated substances. The term includes only [those]:

1. Underground storage tanks that are regulated pursuant to the Federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901 et seq.; and

2. Aboveground storage tanks that have a storage capacity of at least 110 gallons but not more than 30,000 gallons, including, without limitation, aboveground storage tanks located over water and used to supply fuel at a marina or other facility.”

(The proposed NAC’s limit the capacity to 12,000 gallons to conform to the International Fire Code, 2003, adopted by the State of Nevada.)

The passage of SB 58 with the amendment to add aboveground tanks to the definition of storage tanks now requires the Nevada Division of Environmental Protection to propose regulations for aboveground marina petroleum storage tanks under NAC 459.

These proposed aboveground marina storage tank regulations were drafted using input from other states that have marina tank regulations, from technical literature, from the recently Nevada adopted 2003 International Fire Code, and from Nevada marina petroleum tank owner/operators.

The proposed regulations will require leak detection and prevention systems, and specify operational requirements for aboveground marina tanks as well as piping systems similar to what is required for regulated underground storage tank systems.

Owner/operators will have to register each aboveground marina petroleum tank and annually remit to NDEP a \$50 fee for each storage tank compartment.

Presently, there are 7 aboveground marina petroleum storage tanks in Nevada that would be required to come into full compliance with NAC 459 by September 30, 2006.

This regulation also amends NAC 459.9974, which deals with petroleum impacted soil. In addition to the presently regulated constituents benzene, ethylbenzene, toluene and xylene, MTBE (methyl tert-butyl ether), a known contaminant of petroleum impacted soil has been added.

NDEP regulates the disposition of petroleum-impacted soils on a case-by-case basis, giving consideration to among other things, the contaminants present, their concentrations, and the presence or absence of nearby receptors. The proposed modification to NAC 459 will allow NDEP more flexibility in the management of soils impacted by a petroleum release.

### **Public Notifications:**

Workshop notices of the proposed changes to NAC 459 were placed in the Reno Gazette Journal, the Elko Daily Free Press, and the Las Vegas Review-Journal, on February 9, 2005, as well as on NDEP's website.

A Reno and Las Vegas teleconferenced workshop was held March 10, 2005. Each item in proposed NAC 459 was reviewed with the attendees. The public concerns ranged from strong objection to requirements specifying the physical location of aboveground tanks to minor concern regarding the requirements for fuel filtration at the dispensing nozzle.

The comments and suggestions received were integrated into proposed NAC 459, which was then returned to the owner/operators and commenters for final review. The proposed regulation has also been reviewed by the Clark County Fire Dept. and Clark County Health District.

Adoption of the proposed regulations for aboveground marina storage tank systems will facilitate prevention and early detection of petroleum releases and prevent contamination of Nevada lakes and shoreline.

[The technical standards and operating requirements for underground storage tank systems are federally regulated under the Code of Federal Regulations, 40 CFR 280 which was established in 1986. 40 CFR 280 was adopted by this Commission in NAC 459.993. Above-ground storage tank systems, on the other hand, are not federally regulated but are regulated under the International or Uniform Fire, Building, Plumbing, and Electrical codes as well as requirements imposed by local authority. These codes deal mainly with location, construction, and fire prevention of above-ground storage tank systems.

While underground storage tank regulations provide extensively for leak detection and prevention mechanisms, the above-ground storage tank codes mentioned above have minimal leak detection and leak prevention requirements. For example, existing codes for above-ground systems do not require corrosion protection for buried unprotected steel fuel pipes nor do they require secondary containment on fuel supply lines leading to marina dock-mounted dispensers.

Recent events have increased the possibility for a release of petroleum from marina storage tank systems. Due to reduced runoff Nevada's southern lakes are at lower than normal levels. Operators of marina fueling facilities have had to extend their fuel supply lines thousands of feet from permanently located above-ground tank(s) to the marina dock-dispenser(s). They do this by adding sections of pipe to existing fuel supply lines with

numerous connectors, each of which is a potential leak source. As the lake level rises and falls, these pipe extensions are added and/or removed. In some cases, the above-ground fuel storage tank itself is relocated.

Petroleum releases reimbursed by the State of Nevada Petroleum Fund occurred in 1992, 1996, 1998, and 2004 at Echo Bay marina (UST - \$614,700), and in 1996 and 1999 at Lake Meade marina (AST - \$175,300). Additionally, NDEP rented (\$84,000) Petroleum Fund remediation equipment (CatOx) to the Lake Meade National Recreation Area from January 1999 thru January 2002 for a non-Petroleum Fund covered release (8,000 gallons), the total cleanup cost of which is unknown.

## **APPENDIX 8 - Regulation R126-05: Public Water System, Water Quality and Treatment of Water**

Good afternoon Mr. Chairman, Members of the Commission. For the record my name is Doug Zimmerman, Chief of the Bureau of Safe Drinking Water with NDEP.

I will be presenting two petitions to you this afternoon but would like to start with a very brief overview of the Bureau since this is new program to the Division and the Commission. A briefing document was included in your packets and touches on most of this information. In the last legislative session Senate Bill 395 was passed and it resulted in the movement of the drinking water program from the Division of Health to the Division of Environmental Protection. This legislative action completed the movement of drinking water programs from Health to NDEP. Previously legislation had resulted in the movement of the Laboratory Certification program and the Drinking water State Revolving Fund from Health to NDEP.

As the name of the Bureau implies, the Bureau of Safe Drinking water has responsibilities for assuring drinking water meets all health based standards and that is done primarily through the provisions of the federal safe drinking water act which is delegated to the State of Nevada. The transfer of the program from Health occurred in July of this year and included the movement of 17 staff. In early August the Bureau Chief of the program departed for the private sector and I moved into the vacant position near the end of August.

Shortly after moving into the position, I ran into Allen Biaggi, Director of the Department of Conservation and told him of my move and he said I have a great quote I use in all my presentations on safe drinking water – I will email:

I want to share this with you because it really captures the significance of the program and the responsibility that the Division and the Commission have to protect public health. I don't believe there is another program within the Division that has as direct a connection between our actions and the effects on public health.

"The moment a person opens a drinking water tap in Nevada represents perhaps the most intimate connection between public trust and the government's duty to protect public health."

Through the safe drinking water program we assure that we meet that public trust and we do it through a series of activities which include review of facility designs and permitting, inspections which we refer to as sanitary surveys, monitoring of water quality and certification of operators of public water systems. We have responsibilities that include 600 water

systems and nearly 1,000 certified operators. As you would expect the requirements vary with respect to the complexity and number of people served by a system.

That completes my overview and I would be happy to answer any questions, I should also mention that a number of staff from the Bureau are here today they have many years of experience in the program and can help answer any questions the commission may have.

### **Petition #8**

Regulation R126-05: Public water system, water quality and treatment of water.

While this petition is new to the Commission this regulatory package was previously adopted by the Board of Health on February 18, 2005 as temporary regulations. Prior to adoption the Health Div, conducted a workshop on November 12, 2004 to collect comments. As you may be aware, the Board of Health's function is essentially equivalent to the SEC's role and the relationship between the SEC and NDEP was equivalent to the relationship between the Board of Health and the Health Division. As a result of Senate Bill 395 NDEP is here today to have these temporary regulations adopted as permanent.

Since these regulations are new to both NDEP and the Commission, NDEP elected to conduct a second workshop to solicit public comments. That workshop was held on September 22 and we had about twenty participants between our Carson City and Las Vegas location. We didn't receive any comments on this set of regulations however we did have several hours of discussion on the second set of regulations that I will present today.

Mr. Chairman – I like to start with an overview of the regulations, the significance of the amendments and then if you would like I can give a brief overview of the sections but starting with a general overview:

The most significant reason for these proposed amendments is to adopt new and amended federal primary drinking water regulations already in effect under the federal Safe Drinking Water Act. For Nevada to maintain its primacy for drinking water programs we must adopt regulations that are at least as stringent as the federal standards. New standards and rules have been put in place by the federal government for a number of constituents and programs; they were listed in the briefing paper. While these are all important and affect all sizes of systems through out Nevada the new arsenic standard and the variance and exemption rule are very significant in terms of the number of systems and size of systems impacted.

The standard for arsenic was lowered from 50 ppb to 10 ppb and this will require a number of systems in Nevada to add treatment to meet the new standard. Again, if we do not adopt these standards as a State then the federal government will enforce them. Along with these new standards and again using Arsenic as an example the amendments to the regulations provide for a process by which the commission can provide variances and exemptions to water systems under certain conditions. This again is very important to communities facing the requirement to put what may be very expensive treatment systems in place for Arsenic. The variance and exemption process would allow these communities, and we expect about 100 water systems to apply, additional time to meet the new standard. In addition to these 100 systems, we have another 35 water systems that we anticipate entering into bilateral compliance agreements with. These agreements will establish an enforceable process and time frame for these systems to come into compliance. Key to the variances and bilateral compliance agreements is a demonstration by these systems that they will ensure adequate

protection of public health during the process. The regulations in front of you today adopt these new standards and provisions for the issuance of variances and exemptions. Another significant portion of the amendments address processes for treatment and blending of ground water to meet primary or secondary standard – again arsenic being one of the key constituents driving the need for these amendments. Many water systems will be installing some type of treatment system to meet the new standard.

Section 2 and 3 addresses the frequency of sanitary surveys and the meaning of significant deficiency.

Section 4 – requires a PWS to deliver to its customers on an annual basis a consumer confidence report on water quality

Sections 5 – 7 address the variance process

Sections 8 – 22 address treatment or blending of groundwater required of a public water system to meet a primary or secondary drinking water standard.

Section 23 adds new modified definitions including the Commission and the Division

Section 24 adds the word production to judge if a facility is subject to the regulations. If production they are in.

Section 25 – adopts the new primary drinking water standards

Section 26 – adds a reference to the new sections 2- 22 of the proposed regs and requires compliance

Section 27 – adds references to new monitoring requirements of the federal 40 cfr regulations pertaining to primary drinking water standards, requirements to use a certified lab and adds a provision for determining compliance by a running annual average method.

Section 28 – removes unenforceable lower limits for secondary drinking water standards and reduces this section to just the enforceable limits for secondary constituents – these are not health based standards taste, odor, staining, aesthetics. Removes the variance – addressed by other sections

Section 29- address monitoring of secondary constituents and procedures if exceedences are found for notification and plans to return the system to compliance.

Section 30 and 31 – addresses the use of the appropriate method for analysis of drinking water and the use of certified labs.

Section 32 – address various requirements of public notification including exceedences of standards, failure to monitor, failure of treatment techniques and conditions of variances or exemptions

Sections 33 – 36 - addresses the conditions under which the commission can grant a variance or exemption, and the conditions of that variance or exemption, including establish an alternative water supply.

Section 37 – sets forth process for a water system or the public to appeal a decision of the Division to the Commission

Section 38 – address adoption of publications by reference

Section 39 – 58 contain numerous corrections of regulatory references, spelling, additions of reference to the Division of Environmental Protection and the appropriate board of health rather than the Health Division and corrected references to certain treatment standards.

Section 59 – 3 repealed sections one being the definition of Health Division

## **APPENDIX 9 - Petition # 9**

LCB File # 129-05Revises Certification of Operators of Public Water Systems

Mr. Chairman, again these regulations were previously adopted by the State Board of Health – it was at their same meeting on 2/18/05 and the regulations were presented at the same health div workshop on 11/12/04. As I mentioned previously we conducted a second workshop on 9/22/05 during which we had several hours of discussion. As a result of the workshops we do have two amendments that I will be presenting at today's meeting. One of the comments we heard at the workshop was a recommendation that the drinking water operator certification program and the waste water operator certification program which is also the responsibility of NDEP should be evaluated concurrently and differences between levels of experience/education and training should all be examined. We agree with this concept, the programs are now under one agency, NDEP, and we are committed to moving forward with this effort and we have begun that process to compare the two programs.

The enabling legislation for the Operator Certification Program includes the option of appointment by the Commission or previously the Board of health of an Advisory Board to the Commission for the Certification of Operators of Public Water systems. The Board of Health had appointed an advisory Board and by statute that Board continues to function and now is considered an advisory Board to the commission. This set of regulations we are presenting today represents a four-year effort by that Board to update and improve these regulations. A Subcommittee was appointed by the Board to work on these regulations and a very substantial effort has gone into this package of regulations. We have representative of the board and subcommittee here today and the chairman of the Advisory board, Mr. Darrin Price plans on providing comment to the commission.

Mr. Chairman – again I will start with an overview of these regulations.

The regulations cover two primary activities, the certification of operators and the classification of water systems. The way the process works is that we start with the classification of a water system in two areas – their distribution system and their treatment system. The system classification is based on a point system that basically reflects the complexity of the system. There are four classes of distribution systems and four classes of

treatment systems. Based on this classification of the water system – the system must then employee operators who certified at the appropriate level – like the water system classification - there are four levels of certification for distribution and four levels for treatment.